

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF RIGHTS

state of Minnesota, by
William L. Wilson,
commissioner, Department
of Human Rights,

Complainant,

VS.

Poppin Fresh Pies, Inc.,

Respondent.

The above-entitled matter came on for hearing before HEaring Examiner Peter C. Erickson of the Minnesota Office of HEaring Examiners at 9:00 a.m. on Thursday, January 26, in Rcom 300, 1745 University Avenue, St. Paul, Minnesota.

Donald J. Heffernan, Attorney, 100 McColl Building, St. Paul, Minnesota - 55101, appeared as counsel on behalf of Ccomplainant. Edna C. Brazaitis, Attorney, The Pillsbury Company, 608 Second Avenue South, Minneapolis, Minnesota - 55402, appeared as counsel on behalf of Respondent. The record remained open through April 5, 1978, for the submission of post-hearing briefs.

Notice is hereby given that pursuant to Minn. Stat. sec. 363.071, subd. 2, this is the final decision of the Department of Human Rights, and under Minn. Stat. sec. 363.072, any person aggrieved hereby may seek judicial review pursuant to Minn. Stat. sec. 15.0424 and 15.0425.

Based on 'All of the files, records and proceedings herein, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. On March 7, 1975, Barbara Cherner Jewell commenced employment as a Night Supervisor with Poppin Fresh Pies. Her duties consisted mainly of overseeing the waitresses, hostesses, cashiers, cooks and kitchen help. In addition, she did the customary evening paperwork, closed out cash registers, and was

responsible for the payroll. This position's remuneration was hourly, averaging \$600-\$650 a month.

2. On July 8, 1975, Ms. Jewell was promoted to the position of Day Manager as a result of a favorable performance review held that day in her presence by Mr. Marty Shuster (Area manager) , Mr. Ralph Lewis (Unit Manager) , Mr. Larry Anderson (Assistant Unit Manager), and Ms. Ellen Berger (Training Manager). this position involved basically the same duties as Night Supervisor, with the additional responsibility of hiring kitchen and eating area help. The hours were primarily during the day. This was a salaried position paying \$830/month, and was the lowest of the three management positions in the store.

3. From mid July to October, 1975, a lack of attention and motivation caused Ms. Jewell's performance to deteriorate. Ms. Jewell was repeatedly advised of this problem and was given specific advice on ways to upgrade her performance.

4. In early October, 1975, Assistant Area Manager Robert Durig and Area Manager Marty Shuster observed Ms. Jewell in her work environment and felt her performance to be lacking.

5. On October 7, 1975, Unit Manager Ralph Lewis gave Ms. Jewell an unfavorable performance appraisal in writing and discussed ways of improving her job performance.

6. On October 9, 1975, Ms. Jewell was observed at her job and her performance was found to be lacking by Mr. Ralph Lewis and Mr. Marty Shuster.

7. on October 9, 1975, Ralph Lewis advised Ms. Jewell that "she was not performing her job" at which point "her reaction became violent." (T. 127) At that point Mr. Lewis dismissed her. Her replacement was a woman.

8. Personnel 'policies in effect at this time gave unfavorable work performance review subjects reasonable time with which to correct deficiencies prior to termination. These same policies dictated that the Assistant Area Manager is responsible for the hiring and firing of Unit management personnel.

9. Ms. Jewell contacted the Department of Human Rights on October 10, 1975, to file a complaint of discrimination against Poppin Fresh Pies.

10. Ms. Jewell filed for unemployment compensation on October 11, 1975.

11. In mid November, Ms. Jewell acquired a part time sales position with J. B. Hudson jewelers, paying \$2.40/hour. In February, 1976 she expanded her hours to full time and received \$3.00/hour.

12. On December 1, 1975, Ms. Jewell met with James J. Kerwin, vice President and General Manager, and Marty Shuster, Area Manager, Poppin Fresh Pies, to discuss her termination. Mr. Kerwin indicated that personnel policies were violated in that she was not given a fair chance to improve performance. He offered her job back at the same pay and extended his apologies.

13. On January 3, 1976, Marty Shuster contacted Ms. Jewell for her response. She indicated that she would not accept the offer as she had a job with J. B. Hudson Jewelers with a possibility of management at a greater salary than she was paid at Poppin Fresh Pies.

14. In August, 1976, Ms. Jewell accepted a position of management trainee with Hess and Culbertson, Jewelers, in St. Louis, Missouri, at \$700/month.

15. In October, 1976, Ms. Jewell accepted a position of assistant manager at Zales jewelry, in Des Moines, Iowa.

16. In March, 1977, Ms. Jewell accepted the position of assistant manager, Casual Corner Clothing Store, at \$785/month.

17. Ms. Jewell received a total of \$2,046 in unemployment benefits, from October 25, 1975 to May 6, 1976.

18. On or about October 27, 1975, a charge of discrimination was filed against Respondent with the Minnesota Department of Human Rights. A copy of that charge was served upon Respondent. The Department conducted an investigation on the allega-

tions in the charge. On or about May 16, 1976, Complainant found probable cause to believe that Respondent had committed an unfair discriminatory practice. The Department has been unable to obtain appropriate relief by means of conciliation.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction of the matter pursuant to Minn. Stat. sec. 363.071 (1976) and Minn. Stat. 15.052 (1976).

2. Complainant gave proper notice of hearing in this matter, and all relevant, substantive and procedural requirements of law and rule have been complied with.

3. Barbara Cherner Jewell was a good worker as of July 8, 1975. However, from July to October, 1975, her performance became faulty and substandard. The primary reason she was terminated was due to poor work performance and insufficient motivation.

4. Her termination was in violation of company personnel policies in effect at that time. However, her gender was not a factor in nor formed a basis for the termination or the manner of termination. As such, Respondent did not discriminate against Barbara Cherner Jewell on the basis of sex in violation of Minn. Stat. sec. 363.03, subd. 1(2) (b and c) (1976).

Based upon the foregoing Conclusions of Law, the undersigned Hearing Examiner makes the following:

ORDER

That this action be dismissed.

Dated: May 4, 1978.

PETER C. ERICKSON
Hearing Examiner